

Message Text

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JUSE-00 NSAE-00 CTME-00 SNM-05 TRSE-00 ICA-20
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EO 11652: N/A
TAGS: SNAR, MX
SUBJECT: NARCOTICS LAWS - MEXICO

REF : STATE 170187 (NOTAL)

1. MEXICAN LAWS AS THEY RELATE SPECIFICALLY TO MARIJUANA ARE SUMMARIZED IN 77 MEXICO 3726. FOR CONVENIENCE THIS MESSAGE FOLLOWS THE FORMAT REQUESTED IN REFTEL AND REPEATS WHERE APPROPRIATE PROVISIONS ON MARIJUANA.

2. GENERAL: ARTICLE 290 OF THE SANITARY CODE (ART 290 SC) STATES THAT "THE PLANTING, CULTIVATION, CROPPING, ELABORATION, PREPARATION, ADAPTATION, PURCHASE, POSSESSION, TRADE, IMPORTATION, EXPORTATION, TRANSPORTATION IN ANY FORM, MEDICAL PRESCRIPTION, FURNISHING, USE, CONSUMPTION, AND IN GENERAL ANY ACT CONCERNING THE TRAFFIC OF FURNISHING DRUGS OR OF ANY OTHER PRODUCT CONSIDERED AS SUCH IN MEXICO" IS SUBJECT TO THE PROVISIONS OF INTERNATIONAL TREATIES AND MEXICAN LAWS AND REGULATIONS.

(A) ART 292 SC CONTAINS LONG LIST OF PRODUCTS SUBJECT
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TO CONTROLS OF ART 290 SC.

(B) ART 293 SC READS AS FOLLOWS: "WITH RESPECT TO THE FOLLOWING SUBSTANCES AND PLANTS, EVERY ACT MENTIONED IN ARTICLE 290 SHALL BE PROHIBITED IN MEXICO: OPIUM PREPARED FOR SMOKING, HEROIN, ITS SALTS AND PREPARATIONS, CANABIS SATIVA, INDICA AND AMERICANA OR MARI-

JUANA, OPIUM POPPY, ERYTHROXILON NOVEGRATENSE OR COCA IN ANY OF ITS FORMS, DERIVATIVES OR PREPARATIONS."

(C) ART 319-322 SC EXTEND SIMILAR CONTROLS TO PSYCHOTROPIC SUBSTANCES, SPECIFICALLY FORBIDDING ANY ACT INVOLVING PSYCHOTROPIC SUBSTANCES "WHICH HAVE LITTLE OR NO THERAPEUTIC VALUE AND ARE SUSCEPTIBLE TO UNJUSTIFIED USE OR ABUSE, CONSTITUTING AN ESPECIALLY GRAVE PROBLEM FOR PUBLIC HEALTH." MENTIONED AS EXAMPLES ARE DET, DMT DMHP, DOM-STP.

(D) CRIMINAL PENALTIES FOR VIOLATIONS OF SANITARY CODE PROVISIONS ARE CONTAINED IN ARTICLES 193-199 OF THE PENAL CODE (ART 193-199 PC).

(E) ART 193 PC DISTINGUISHES THREE GROUPS OF DRUGS:

(1) ALL THOSE MENTIONED IN ART 292 SC, PLUS THOSE "WHICH HAVE LITTLE OR NO THERAPEUTIC VALUE AND ARE SUSCEPTIBLE TO UNJUSTIFIED USE OR ABUSE, CONSTITUTING AN ESPECIALLY GRAVE PROBLEM FOR PUBLIC HEALTH" (THIS GROUP WOULD INCLUDE OPIUM, HEROIN, COCAINE, MARIJUANA AND PSYCHOTROPICS SUCH A DOM-STP); (2) THOSE "WHICH HAVE SOME THERAPEUTIC VALUE BUT CONSTITUTE A GRAVE PROBLEM FOR PUBLIC HEALTH"; AND (3) THOSE "WHICH HAVE THERAPEUTIC VALUE BUT CONSTITUTE A PROBLEM FOR PUBLIC HEALTH".

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3. POSSESSION

(A) ACQUISITION OR POSSESSION FOR THE FIRST TIME IN AN AMOUNT APPROPRIATE FOR PERSONAL AND IMMEDIATE USE OF MARIJUANA, CANABIS DERIVATIVES, OR DRUGS IN GROUPS TWO AND THREE IS PUNISHABLE BY IMPRISONMENT FROM SIX MONTHS TO THREE YEARS AND A FINE OF FROM 1000 TO 5000 PESOS, ASSUMING PERSON IS NOT "ADDICTED" TO MARIJUANA OR THE DRUG INVOLVED. IF A PERSON OTHERWISE FALLING UNDER THIS PROVISION GIVES THE DRUG TO ANOTHER FOR THE OTHER'S PERSONAL AND IMMEDIATE USE, PENALTY INCREASES TO IMPRISONMENT FROM TWO TO SIX YEARS AND A FINE FROM 1000 TO 10,000 PESOS. IF A PERSON OTHERWISE FALLING UNDER THIS PROVISION ENGAGES IN PUBLICITY OR PROPAGANDA OR OTHERWISE ENCOURAGES ANOTHER PERSON TO CONSUME MARIJUANA OR OTHER DRUGS, PENALTY INCREASES TO IMPRISONMENT FROM THREE TO 12 YEARS AND A FINE FROM 3000 TO 30,000 PESOS. IF PERSON ENCOURAGED IS UNDER AGE 18 OR OTHERWISE INCOMPETENT, PENALTY FOR PERSON ENCOURAGING DRUG USE INCREASES TO IMPRISONMENT FROM FIVE YEARS THREE MONTHS TO 12 YEARS AND A FINE FROM 3,000 TO 30,000 PESOS.

(B) POSSESSION OF ALL OTHER ILLICIT SUBSTANCES, AS WELL AS SECOND OFFENSE FOR POSSESSION OF DRUGS CITED IN PRECEDING PARAGRAPH, IS PUNISHABLE BY IMPRISONMENT FROM FIVE YEARS THREE MONTHS TO 12 YEARS AND A FINE FROM 5,000 TO 50,000 PESOS.

(C) ACQUISITION OR POSSESSION OF ANY DRUG BY A PERSON "WHO HAS THE HABIT OR NEED TO CONSUME THEM" IS NOT A CRIME, PROVIDING THE AMOUNT INVOLVED IS THAT "WHICH IS STRICTLY NECESSARY FOR HIS OWN USE". SUCH PERSONS ARE, HOWEVER, SUBJECT TO COMPULSORY MEDICAL

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TREATMENT AND/OR CONFINEMENT IN A HEALTH FACILITY.

(D) LAW ENFORCEMENT PERSONNEL HAVE AUTHORITY TO DROP CHARGES UP TO TIME CASE IS TAKEN TO THE COURT. WHEN AMERICAN CITIZENS ARE INVOLVED, ATTORNEY GENERAL'S OFFICE USUALLY TURNS VIOLATOR OVER TO EMBASSY OR CONSULAR POST IF AMOUNT INVOLVED IS LESS THAN 100 GRAMS OF MARIJUANA PROVIDING ARRESTEE AGREES TO DEPART MEXICO IMMEDIATELY.

4. PRODUCTION AND TRAFFICKING.

(A) CULTIVATION OF MARIJUANA IS PUNISHABLE BY IMPRISONMENT FROM TWO TO NINE YEARS AND A FINE FROM 1000 TO 10,000 PESOS.

(B) CULTIVATION, PRODUCTION, OR TRAFFICKING IN ANY GROUP THREE DRUG IS PUNISHABLE BY IMPRISONMENT FROM

SIX MONTHS TO EIGHT YEARS AND FINE FROM 2000 TO 20,000 PESOS.

(C) CULTIVATION, PRODUCTION, OR TRAFFICKING IN ANY GROUP TWO DRUG IS PUNISHABLE BY IMPRISONMENT FROM UNCLASSIFIED

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THREE TO 12 YEARS AND FINE FROM 3000 TO 30,000 PESOS

(D) CULTIVATION, PRODUCTION, OR TRAFFICKING IN ANY GROUP ONE DRUG (EXCEPT CULTIVATION OF MARIJUANA) IS PUNISHABLE BY IMPRISONMENT FROM FIVE YEARS THREE MONTHS TO 12 YEARS AND FINE FROM 5000 TO 50,000 PESOS. MEDICAL PERSONNEL ARE SUSPENDED FROM THEIR ACTIVITIES FOR A PERIOD EQUAL TO THE SENTENCE IMPOSED, BEGINNING AFTER COMPLETION OF IMPRISONMENT. IF A PLACE OF BUSINESS IS USED FOR THE ILLICIT ACTIVITY AND IF THE OWNER IS INVOLVED, THE BUSINESS IS SUSPENDED INDEFINITELY.

(E) PROVISION OF FINANCIAL OR OTHER RESOURCES FOR ILLICIT PRODUCTION OR TRAFFICKING IS PUNISHABLE BY IMPRISONMENT FROM FIVE YEARS THREE MONTHS TO 12 YEARS AND A FINE FROM 5000 TO 50,000 PESOS.

(F) ILLICIT IMPORTATION OR EXPORTATION OF ANY DRUG IS PUNISHABLE BY IMPRISONMENT FROM SEVEN TO 15 YEARS AND A FINE FROM 5000 TO 50,000 PESOS.

5. COMMENTS ON NARCOTIC OFFENSES

(A) PENAL CODE DENIES BAIL TO THOSE CHARGED ON NARCOTICS OFFENSES. THOSE CONVICTED ON NARCOTICS OFFENSES ARE NOT ELIGIBLE FOR PAROLE.

(B) PENAL CODE MAKES NO PROVISIONS FOR SPECIFIC AMOUNTS. THUS A PERSON WITH TWO OUNCES OF MARIJUANA MAY BE TRIED FOR SIMNTE#POSSESSION ZPILE A PERSON IN WHOSE AIRCRAFT ARE FOUND TWONWARI# AND SEEDS MAY BE TRIED FOR TRAFFICKING IF THERE IS REASON TO PRESUME THAT THE SEEDS ARE THE RESIDUE OF A LARGER CARGO ONCE UNCLASSIFIED

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CARRIED.

(C) MEXICO HAS NO EQUIVALENT TO U.S. LAW ON CONSPIRACY TO TRAFFIC, IMPORT, OR EXPORT DRUGS.

6. CRIMINAL PROCEDURE

(A) INVESTIGATIVE DETENTION - THE POLICE ARE SUPPOSED TO DETERMINE THROUGH INVESTIGATION AND QUESTIONING OF THE ARRESTEE WHETHER AN OFFENSE HAS BEEN COMMITTED AND WHETHER THE ARRESTEE IS PROBABLY THE PERSON WHO COMMITTED IT. DURING THE PERIOD WHEN THE ARRESTEE IS HELD BY THE POLICE, HE IS NOT USUALLY ALLOWED TO COMMUNICATE WITH AN ATTORNEY OR ANYONE ELSE EXCEPT THE CONSULAR OFFICER. IN PRACTICE, THERE APPEARS TO BE NO LIMIT IMPOSED UPON THE POLICE BEFORE THEY MUST TURN A DETAINED PERSON OVER TO PUBLIC PROSECUTOR. ARTICLE 107 OF THE MEXICAN CONSTITUTION, SECTION 18, THIRD PARAGRAPH, HOWEVER, DOES PROVIDE FOR THE CONSIGNMENT TO THE POLICE OR ANY OTHER AGENT OF THE ARRESTING AUTHORITY WITHIN 24 HOURS FROM THE ARREST. MEXICAN POLICE ARE BOUND BY THE VIENNA CONVENTION ON CONSULAR RELATIONS TO ADVISE AN AMERICAN ARRESTEE OF HIS RIGHT TO COMMUNICATE WITH AN AMERICAN CONSULAR OFFICER, AND TO PERMIT HIM TO DO SO. THE CONSULAR CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND MEXICO IN ARTICLE VI, PARAGRAPH 2, ITEM C ALSO GUARANTEES THIS RIGHT.

(B) PRETRIAL DETENTION - ARTICLE 19 OF THE CONSTITUTION PROVIDES THAT NO DETENTION MAY EXCEED THREE DAYS UNLESS IT IS JUSTIFIED BY AN ORDER FOR FORMAL IMPRISONMENT ISSUED BY A JUDGE. THIS PROVISION IS CLARIFIED - OR CLOUDED, DEPENDING UPON ONE'S POINT

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OF VIEW - BY ARTICLE 107, SECTION XVIII, PARAGRAPH ONE, WHICH STATES THAT WARDENS AND JAILERS WHO DO NOT RECEIVE AN AUTHORIZED COPY OF AN ORDER OF FORMAL IMPRISONMENT FOR A DETAINEE WITHIN 72 HOURS, COUNTED FROM THE TIME THAT THE LATTER IS PUT AT THE DISPOSITION OF A JUDGE, ARE SUPPOSED TO CALL THE ATTENTION OF THE JUDGE TO THIS FACT AND, IF NO ORDER OF FORMAL IMPRISONMENT IS RECEIVED WITHIN THREE HOURS, TO PUT THE DETAINEE AT LIBERTY. THE EMBASSY HAS BEEN ADVISED BY CRIMINAL LAW ATTORNEYS AND LAW PROFESSORS THAT, IN PRACTICE, THIS PROVISION MERELY PLACES AN OBLIGATION ON THE PRISON DIRECTORS TO ASSURE THAT HE OBTAINS THE FORMAL ORDER OF IMPRISONMENT AND THAT LITTLE IMPORTANCE IS ATTACHED TO THE TIME FRAME. THUS THIS PROVISION IN PRACTICE DOES NOT RESULT IN RELEASE OF A PRISONER. THE ABOVE COMBINATION OF PROVISIONS COULD LOGICALLY BE TAKEN TO MEAN THAT A JUDGE HAS 72 HOURS TO CONDUCT HIS HEARING AND INVESTIGATION, AND EITHER RELEASE THE DETAINEE OR ISSUE AN ORDER OF FORMAL IMPRISONMENT, THUS BINDING OVER THE ACCUSED TO TRIAL. IT ALSO IMPLIES THAT, IN MEXICAN EYES, A PERSON IS NOT REALLY ARRESTED OR DETAINED UNTIL AN ORDER OF FORMAL IMPRISONMENT IS UNCLASSIFIED

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ISSUED.

MANY AUTHORITIES, HOWEVER, APPEAR TO BE CONVINCED THAT THE PROVISIONS OF THE JUST CITED ARTICLE 19, REGARDLESS OF ITS WORKING, MEANS THAT THE POLICE AND AGENTE DEL MINISTERIO PUBLICO HAVE 72 HOURS IN THE AGGREGATE FROM THE TIME THE DETAINEE IS APPREHENDED UNTIL HE MUST EITHER BE RELEASED OR "CONSIGNED" TO A JUDGE. IN PRACTICE, THE PROVISION REFERS TO THE POST-ARREST PERIOD; I.E., WHEN THE INDIVIDUAL HAS BEEN CONSIGNED. THE INVESTIGATION PHASE HAS NO REAL TIME LIMIT. IN SOME INSTANCES EARLY CONSIGNMENT MAY EVEN BE CONTRARY TO THE INTERESTS OF A CITIZEN SEEKING EARLY RELEASE FROM DETENTION.

(C) TRIALS - THE CONSTITUTION IS CLEAR IN PROVIDING TIME LIMITS FOR TRIALS. ARTICLE 20, SECTION VIII PROVIDES THAT AN INDIVIDUAL ACCUSED OF AN OFFENSE, FOR WHICH THE MAXIMUM PENALTY IS NO MORE THAN TWO YEARS IN PRISON WILL BE JUDGED WITHIN FOUR MONTHS, AND THAT ONE ACCUSED OF AN OFFENSE CARRYING A MAXIMUM SENTENCE OF MORE THAN TWO YEARS WILL BE JUDGED WITHIN ONE YEAR. THERE DOES NOT APPEAR TO BE ANY DISAGREEMENT AS TO THE MEANING OF THIS PROVISION. IT SHOULD BE EMPHASIZED THAT THE PROVISION APPLIES BOTH TO STATE AND FEDERAL COURTS. NONETHELESS, THE TRIALS OF MANY AMERICANS, PARTICULARLY THOSE ACCUSED OF DRUG OFFENSES, ALL OF WHICH CARRY MAXIMUM SENTENCES OF MORE THAN TWO YEARS, HAVE GONE WELL OVER THE ONE-YEAR LIMIT. THE EMBASSY, DURING 1974 AND 1975, PROTESTED THIS TYPE OF VIOLATION THROUGH THE DIPLOMATIC CHANNEL, WITH LITTLE SUCCESS.

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MOST OF THE PROTESTS WERE SIMPLY IGNORED; IN A FEW CASES, THE PROTESTS SEEMED TO PROVOKE SENTENCING. MORE RECENTLY, THE EMBASSY HAS COMMUNICATED DIRECTLY WITH OFFENDING JUDGES AS WELL AS WITH OFFICIALS OF THE ATTORNEY GENERAL'S OFFICE WITH SATISFACTORY RESULTS.

THERE IS SOME INDICATION THAT EMBASSY INTERVENTION TO BRING ABOUT A SENTENCE WITHIN THE CONSTITUTIONAL TIME LIMIT MAY HAVE OFFENDED SOME JUDGES, CAUSING THEM TO HAND OUT HEAVIER SENTENCES THAN THEY MIGHT OTHERWISE HAVE DONE. IN RESPONSE TO A REQUEST FOR INFORMATION FROM THE EMBASSY, THE SECRETARIAT OF FOREIGN RELATIONS ADVISED DURING 1976 THAT A PRISONER WHOSE TRIAL HAS GONE BEYOND THE ONE-YEAR MAY APPLY FOR A RELIEF BY MEANS OF AN AMPARO (QV). BECAUSE THIS MEANS OF SECURING RELIEF IS ITSELF VERY TIME CONSUMING, IT IS USUALLY NOT EFFECTIVE. IN MANY CASES, A VERDICT CANNOT BE HANDED DOWN WITHIN THE CONSTITUTIONAL LIMIT BECAUSE OF DELIBERATE DELAYS BY THE DEFENSE, SUPPOSEDLY IN HOPES THAT SOMETHING WILL HAPPEN TO THE JUDGE AND A FRIENDLIER ONE WILL BE APPOINTED. IN OTHER CASES, THE DELAY RESULTS FROM OVERCROWDED COURT DOCKETS. IN PRACTICE, A VERY COMPETENT ATTORNEY CAN IN FACT OBTAIN RELATIVELY SPEEDY RESULTS - PERHAPS THREE MONTHS.

(D) APPEALS AND AMPAROS - APPEALS UNDER THE MEXICAN SYSTEM VARY IN LENGTH. IN DRUG-RELATED CASES, THE APPELLATE PROCESS USUALLY TAKES FROM FOUR TO SIX MONTHS. IF A PERSON FILES AN AMPARO (A WRIT SIMILAR

TO BUT NOT EXACTLY THE SAME AS HABEAS CORPUS IN THE UNITED STATES), THE NORMAL LENGTH OF THIS LEGAL PROCEDURE IS FROM SIX TO NINE MONTHS.

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(E) FREE LEGAL COUNSEL - PUBLIC DEFENDERS IN MEXICO OFTEN HAVE HUGE WORKLOADS WHICH PREVENT THEM FROM GIVING INDIVIDUAL PRISONERS THE ATTENTION THEIR CASE REQUIRES. THE SITUATION IS PARTICULARLY BAD IN THE COURTS IN THE FEDERAL DISTRICT, BUT IS LIKEWISE A MATTER OF SERIOUS CONCERN IN OTHER PARTS OF THE COUNTRY. ATTORNEYS ARE AVAILABLE IN MEXICO TO HANDLE NARCOTICS CASES, BUT THEIR SERVICES ARE USUALLY FAR FROM ADEQUATE, AND THEIR FEES EXCESSIVELY HIGH. A DISTRESSING NUMBER OF CRIMINAL LAWYERS IN MEXICO ARE WELL KNOWN FOR THEIR UNETHICAL PRACTICES. LESS SCRUPULOUS ATTORNEYS OFTEN APPROACH A NEW ARRESTEE AND PROMISE HIM OR HER RELEASE IN A SHORT PERIOD OF TIME IN EXCHANGE FOR A LARGE SUM OF MONEY WHICH THE ATTORNEY IMPLIES IS FOR BRIBES. THESE ATTORNEYS THEN "DISAPPEAR". UNSCRUPULOUS ATTORNEYS FREQUENTLY DEMAND ADDITIONAL MONEY FOR EXTRA SERVICES AFTER THE INITIAL SUM REQUESTED HAS BEEN PAID. IN SUM, THE LEGAL SERVICES AVAILABLE TO PERSONS ARRESTED FOR NARCOTICS OFFENSES ARE FAR FROM SATISFACTORY.

(F) PAROLE - ACCORDING TO ARTICLE 85 OF THE MEXICAN PENAL CODE, DRUG OFFENDERS ARE INELIGIBLE FOR PAROLE.
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THEY MAY, HOWEVER, TAKE ADVANTAGE OF WORK CREDITS. FOR EACH TWO DAYS A PRISONER WORKS, ONE DAY IS REDUCED FROM THE TIME REMAINING TO BE SERVED.

(G) TREATMENT OF MINORS - LEGISLATION PROVIDES SPECIAL CONSIDERATION FOR MINORS CONVICTED OF DRUG OFFENSES. IF THE ACCUSED IS UNDER 18 YEARS OF AGE, HE IS NOT SENT TO PRISON. RATHER, HE IS CONSIGNED TO A SPECIAL COURT FOR JUVENILES WHERE THE JUDGE WILL EITHER TURN HIM OVER TO THE MINOR'S GUARDIAN OR SEND HIM TO A SPECIAL SCHOOL FOR THE REHABILITATION OF MINORS. THE JUDGE WILL, OF COURSE, REQUIRE THE MINOR TO APPEAR BEFORE HIM PERIODICALLY IN ORDER TO DETERMINE IF THE YOUTH IS MAKING SATISFACTORY PROGRESS TOWARD HIS REHABILITATION. IN THE CASE OF MINOR OFFENDERS OF ANOTHER NATIONALITY, THEY ARE DEPORTED FROM THE COUNTRY AS UNDESIRABLE ALIENS.

(H) CONCLUSIONS

NOTWITHSTANDING SOME OF THE LEGAL PROBLEMS MENTIONED ABOVE, THE EMBASSY HAS IN FACT OBSERVED OVER THE LAST TWO YEARS A CONSIDERABLE IMPROVEMENT IN THE WORKING RELATIONSHIP WITH MEXICAN OFFICIALS INVOLVED IN THE PRACTICAL SIDE OF LAW ENFORCEMENT ACTIVITIES. IMPROVED COORDINATION WITH THESE MEXICAN OFFICIALS, PARTICULARLY THE COOPERATION RECEIVED FROM THE OFFICE OF THE ATTORNEY GENERAL OF MEXICO, HAS RESULTED IN A FULLER AWARENESS AND RESPONSIVENESS TO THE HUMAN RIGHTS OF AMERICAN CITIZENS ARRESTED AND DETAINED IN MEXICO. AN EXAMPLE OF THIS COOPERATION IS THE "SMALL AMOUNTS POLICY" INSTITUTED BY THE OFFICE OF THE ATTORNEY GENERAL OF MEXICO UNDER WHICH CHARGES

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ARE DROPPED AGAINST THOSE AMERICANS ARRESTED WITH LESS THAN 100 GRAMS OF MARIJUANA IN THEIR POSSESSION (SEE PARA 3 (D) ABOVE). OTHER EXAMPLES COVER: IMPROVED COORDINATION ON VARIOUS PHASES AND ASPECTS OF THE TRIAL PROCEDURE WHICH RESULT IN MORE TIMELY ISSUANCE OF VERDICTS AND THE RESOLUTION OF APPEALS OR AMPAROS; AND THE COLLECTION OF REQUIRED MEXICAN DOCUMENTATION RELATING TO THE TRANSFER OF AMERICAN PRISONERS TO THE UNITED STATES UNDER THE TREATY ON THE EXECUTION OF PENAL SENTENCES. LUCEY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NARCOTICS, LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 21 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978MEXICO11935
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780301-0289
Format: TEL
From: MEXICO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780734/aaaabcgr.tel
Line Count: 492
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 5dea146f-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 9
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 170187
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 18 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1927463
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS - MEXICO
TAGS: SNAR, MX
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/5dea146f-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014